

# Environmental Response Act

## 65-3452a

### Chapter 65.--PUBLIC HEALTH

#### Article 34.--SOLID ANDHAZARDOUS WASTE

**65-3452a. Definition of hazardous substances.** As used in this act, unless the context clearly requires otherwise, "hazardous substances" shall have the meaning ascribed to such term by section 101 of the comprehensive environmental response, compensation and liability act of 1980 of the United States as in effect on January 1, 1988.

**History:** L. 1988, ch. 256, § 1; July 1.

## 65-3453

### Chapter 65.--PUBLIC HEALTH

#### Article 34.--SOLID ANDHAZARDOUS WASTE

**65-3453. Authority of secretary concerning clean-up activities.** (a) The secretary shall have the power to:

(1) Determine that the clean up of a site is necessary to protect the public health or the environment;

(2) expend and authorize the expenditure of moneys from the environmental response fund;

(3) issue clean-up orders to persons responsible for the health or environmental hazard created by the hazardous substance;

(4) recover moneys from persons responsible for the health or environmental hazard created by the hazardous substance;

(5) assign personnel and equipment necessary to carry out the purpose of this act;

(6) enter into contracts or agreements with any person or company to conduct the necessary clean-up operations.

(b) Any authorized officer, employee or agent of the department or any person under contract with the department may enter onto any property or premises, at reasonable times and upon written notice to the owner or occupant, to gather data, conduct investigations, or take remedial action where the secretary determines that such action is necessary to protect the public health or environment:

(1) If consent is not granted by the person in control of a site or suspected site regarding any request made by any employee or agent of the secretary under the provisions of this section, the secretary may issue an order directing compliance with the request. The order may be issued after such notice and opportunity

for consultation as is reasonably appropriate under the circumstances;

(2) The secretary may ask the attorney general to commence a civil action to compel compliance with a request or order referred to in paragraph (1). Where there is a reasonable basis to believe there may be pollution, the court shall take the following actions:

(A) In the case of interference with entry or investigation, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or investigation unless under circumstances of the case the demand for entry or investigation is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;

(3) All orders issued hereunder shall be subject to the provisions of K.S.A. 65-3456a and amendments thereto.

(c) The secretary is hereby authorized to adopt any rules and regulations necessary to carry out the provisions of this act.

**History:** L. 1984, ch. 219, § 2; L. 1988, ch. 256, § 3; July 1.

## 65-3454

### Chapter 65.--PUBLIC HEALTH

#### Article 34.--SOLID ANDHAZARDOUS WASTE

**65-3454.**

**History:** L. 1984, ch. 219, § 3; Repealed, L. 1988, ch. 256, § 7; July 1.

## 65-3454a

### Chapter 65.--PUBLIC HEALTH

#### Article 34.--SOLID ANDHAZARDOUS WASTE

**65-3454a. Environmental response fund created; receipts and expenditures; subaccounts.** (a) (1)

There is hereby created the environmental response fund. All moneys received by the secretary as grants, gifts, bequests or state or federal appropriations to carry out remedial action at sites polluted by hazardous substances shall be deposited in such fund. All expenditures from the environmental response fund shall be made in accordance with appropriations acts and upon warrants of the director of accounts

and reports issued pursuant to vouchers approved by the secretary.

(2) The secretary is authorized to receive from the federal government or any of its agencies or from any private or governmental source any funds made available under laws, rules and regulations for site cleanup or other remedial action where environmental pollution is or threatens to create a health or environmental hazard.

(b) The environmental response fund shall be maintained as individual subaccounts, as follows:

(1) State appropriations or funds from other sources designated for remedial activities at specific state-lead sites shall be maintained in a separate account. Disbursement of funds from this account shall be made only for activities related to the sites at which the appropriating or donating person has designated.

(2) State appropriations or funds from other sources designated as state match for remedial activities at federal national priority list sites shall be maintained in a separate account. Disbursement of funds from this account shall be made only for remedial design and remedial action at the national priority list sites for which the appropriating or donating person has designated.

(3) State appropriations or funds from other sources designated for emergency response activities or environmental response at nonspecific sites shall be maintained in a separate account. Disbursement of funds from this account shall be made for activities at any sites polluted by hazardous substances where remedial action is necessary to protect public health or the environment.

(4) State appropriations of funds from other sources designated as state match for federal leaking underground storage tank trust fund resources used to conduct remedial action to reduce or eliminate environmental pollution from leaking underground storage tanks of petroleum or hazardous substances shall be maintained in a separate account. Disbursements of funds from this account shall be made only for remedial action to reduce or eliminate environmental pollution from leaking underground petroleum or hazardous substance storage tanks. Moneys recovered from any responsible person for remediation to reduce or eliminate environmental pollution shall be deposited to the credit of the environmental response fund except that a proportional share may be returned to the federal source from which it came.

(c) Subject to the limitations in subsection (b), the secretary is authorized to use funds from the environmental response fund to pay the cost of:

(1) The design and review of remedial action plans;

(2) contracting for services needed to supplement the department's staff expertise in site investigations;

(3) consultation needed concerning remedial action;

(4) mitigation of adverse environmental impacts;

(5) emergency or long-term remedial activities;

(6) legal costs, including expert witnesses, incurred in recovery of fund expenditures;

(7) state matching costs for remedial action funded with the federal hazardous substance superfund established by section 9507 of the Internal Revenue Code of 1986; and

(8) state matching costs for remedial action funded with the federal leaking underground storage tank trust fund established by section 9508 of the Internal Revenue Code of 1986.

(d) On the effective date of this act, the director of accounts and reports shall transfer all moneys in the pollutant discharge cleanup fund and the hazardous waste cleanup fund to the environmental response fund, and the pollutant discharge cleanup fund and the hazardous waste cleanup fund are hereby abolished.

**History:** L. 1988, ch. 256, § 2; July 1.

## 65-3455

### Chapter 65.--PUBLIC HEALTH

#### Article 34.--SOLID ANDHAZARDOUS WASTE

**65-3455. Responsibility for payment of clean-up costs; actions to recover costs.** Any person responsible for the discharge, abandonment or disposal of hazardous substances which the secretary determines is necessary to be cleaned up pursuant to K.S.A. 65-3453 and amendments thereto shall be responsible for the payment of the costs of investigation to determine whether remedial action is necessary at the site. If remedial action is required to protect the public health and environment, the costs of that remedial action shall be borne by the responsible party. If the secretary incurs costs or expends funds for such activities, the responsible person shall be notified of such costs and expenditures and shall make repayment of all costs incurred for response to the site in accordance with K.S.A. 65-3454a and amendments thereto. If the responsible person fails to pay for such costs, such payment or repayment shall be recoverable in an action brought by the secretary in the district court of Shawnee county. Any money recovered under this section shall be deposited in the environmental response fund.

**History:** L. 1984, ch. 219, § 4; L. 1988, ch. 256, § 4; July 1.